

# Nursing & Assisted Living Facility Professional

“NEWS AND VIEWS YOU CAN REALLY USE”

MARCH 2016

ISSUE 3, VOLUME 6

SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

## THE HAT ADVANTAGE by Rebecca Adelman

# SO YOU'VE BEEN SUED! NOW WHAT?



There may come a day when your facility, management company, owner and even you are served with a lawsuit arising from care delivered to a resident during the continuum of care. This month, special contributor Hunter Carroll, president of Hagwood Adelman Tipton, and

I will highlight various protocols for your organization to consider when responding to

- Medical Records Request
- Preservation of Evidence Letter
- Notice of Intent and/or a Complaint

First, take a deep breath. You and your team are prepared for this and now is the time to let the process work. Second, allow your team to work. Throughout this process, the key objectives are to understand the issues affecting the company, to take action swiftly, and to communicate intra-company and with your attorney.

### Responding to the Medical Records Request

A Medical Records Request (MRR) can be from 1) intermediaries such a social security, insurance company or a subpoena; 2) the resident or family; or 3) an attorney for a resident or family. While there are minor variations in how to respond to these requests, generally, we recommend these events occur during the ten (10) days following a request and lead by the administrative, clinical and health information team.

- Submit the request to the administrator (subpoena, attorney letter, resident/family or other)
- Inform key personnel in your organization (regional administrators, nurse consultants, compliance officer)
- Obtain all information regarding authority of requesting party (usually a family member) including Power of Attorney, Durable Power of Attorney for Health Care, Probate/Estate Administrator, Guardian, Conservator and deliver that information within 24 hours to the compliance officer and attorney
- Gather and review significant other information including accident and incident reports, summary investigations, soft files, grievance logs, administrative file, arbitration agreement etc., within 48 hours

- Obtain a recommendation from your attorney regarding the request and whether the authorization is valid and whether the records should be produced
- Produce medical records to an intermediary (insurance, disability, social security, therapy) by the facility and per recommendations by the attorney
- Gather all available medical records for the resident. These records should include all medical records, including EMR, and all financial and admission records. As you know, the records are generally maintained throughout the facility and care should be taken to reasonably search for records that may not yet be filed away. While it is certainly appropriate to supplement the production of records, it is generally best to provide all requested information during the initial production.
- Review the medical record, identify missing documentation and reports, and search and retrieve them within 72 hours
- Complete a mini-clinical and factual summary including a timeline of significant events/concerns within seven (7) days with a focus on specific issues in the MRR, if identified. Determine if there is any survey activity related to the resident
- Meet with department heads to discuss identified concerns conduct an Inter-Disciplinary Team Meeting and in-service within 48 hours
- Secure the medical record with any and all related documentation including overflow in the administrator's office. (If the resident currently resides in the building, keep a copy on the unit and secure the original record in the administrator's office)
- Forward copies of all applicable information to your attorney (and compliance officer)

Your attorney will make recommendations for plans of action and further investigation related to the MRR.

**REMEMBER:** If the resident's attorney contacts the facility for status of the records request, call the facility attorney immediately. Always be aware to whom you are speaking and whether or not you are talking to the facility attorney.

Responding to the Preservation of Evidence Letter, Notice of Intent and/or Complaint

The Preservation of Evidence Letter, Notice of Intent (NOI) to file

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# Pathway to Rehabilitation Excellence

By Kaleb Roudabush, NSCA-CPT  
Wellness Coordinator

## BE BRAVE: DON'T GIVE UP!

As we launch into the month after ambitious new years resolutions have been set, it's important to look at the facts:

- 39% of individuals in their twenties achieve the resolutions they set.
- Only 14% of individuals over the age of 50 achieve their resolutions.

So...what's with the 25% gap? What, exactly, makes us 25% less likely to achieve our goals once we reach the age of 50? Our bodies inevitably change as we age -- there is no getting around that. As Benjamin Franklin said, "In this world nothing can be said to be certain, except death and taxes." And in some ways, he was right: as we age, it becomes harder to lose weight and more difficult to keep our energy levels, flexibility and strength up. But instead of rolling over and giving up before we even try, we need to really consider the value of leading by example.

Regardless of your career or occupation, your health allowed you to do your job and in return you affected not only the lives of those around you but also the history of our world. Our society advances based on the efforts of both the young and the elderly. If the elders of our society give up after 50 years old, consider the poor example that sets for the younger generations. And then consider the example of perseverance that can be set if we *don't* give up after 50 years old, no matter if it's not as easy as it once was. Childhood obesity has more than tripled in recent years, costing over \$100 billion a year. It's up to us to send a message. To *lead by example*. We can't wait for someone else to do the job. If we want to set a powerful example of health for the younger generations, as elders, we must be the ones to help shape the future.


The more healthy decisions you make, the better you will age, enabling yourself to enjoy the fruits of your labor for longer. In fact, some of your best accomplishments can come from later years in life. You have more wisdom and perspective than ever before, and you can use it to pursue a more well balanced life, and help carve the path for younger people to follow.

The solution to better health is you. Your health, and your life, are waiting on you. So what are you waiting for? Continue to write your story -- don't give up! The best is yet to come.

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*The HAT Advantage continued from page 1*

a Lawsuit, and/or Complaint (lawsuit) most often follow an MRR. Your attorney should be involved, and no facility employee should have contact with plaintiff's attorneys or discuss matters with the resident/family. If contact is attempted by the resident/family or plaintiff's attorney, contact your attorney immediately. If the resident continues to reside in the building, communication between family, resident, and staff should continue daily exclusive to the continuum of care.

**While there are minor variations on how to respond to these legal events, we recommend the following:**

- Submit the Preservation of Evidence Letter, Notice of Intent and/or Complaint ("documents") to administrator
- Inform key personnel in your organization (regional administrators, nurse consultants, and compliance officer)
- Examine Preservation of Evidence Letter and identify documents, electronic and hard copy, to maintain, preserve, retain, protect, and not destroy
- Gather and review significant other information including accident and incident reports, summary investigations, soft files, grievance logs, administrative file, arbitration agreement etc., within 48 hours
- Review the medical record, identify missing documentation and reports, and search and retrieve them within 72 hours
- Complete a mini-clinical and factual summary including a timeline of significant events/concerns within seven (7) days with a focus on specific issues in the MRR, if identified. Determine if there is any survey activity related to the resident.

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# Getting on the Same Page

by Paige Hector, LMSW

## Are You Outside Your Scope of Training?



In health care, most people are familiar with the term scope of practice. Nurses must practice within their scope as an RN, an LPN or an ANP. Social workers don't have a scope of practice per se but they have guidance in the form of Standards of Practice. Physicians complete fellowships, have specialties and get certifications. These 'things' define the individual's expertise and competence. I'd like to take a different route and introduce a term called scope of training.

Each day across the country, individuals are admitted to our nursing communities with an incredible assortment of medical, emotional and psychosocial challenges. Diagnoses including obesity, schizophrenia, cancer, dementia, brain injuries, AIDS, addiction, and chronic pain are but a smattering of the areas in which nursing home staff are expected to reliably perform. From the interdisciplinary assessment to the development of the care and treatment plan to the execution of that plan, staff must be proficient.

Let's not forget to mention the dizzying array of medications and treatments that residents and patients require – mechanical ventilators, complex wound care, IV antibiotics, physical/occupational/speech therapy, chemotherapy, artificial nutrition, tracheostomy care, mental health services and dialysis. Some medication lists are literally longer than your Thanksgiving grocery list! Staff must be alert to adverse reactions, mood and behavior changes, efficacy, consents, gradual dose reductions, correction of polypharmacy, medication stop dates, on and on. Phew.

And for good measure, let's remember the diverse issues, challenges and topics related to advance care planning and end-of-life care. Not only must staff be capable of broaching and engaging residents and their family in these conversations, they must have knowledge of the legalities, the specific documents, crisis management skills and the ability to exude endless empathy extraordinaire.

While a facility may employ some of the most medically skilled clinicians (nurses, social workers, dietitians, and medical providers) there will obviously be instances when an individual patient's needs are outside their "scope of training." Caring for a patient who is obese with co-morbid diagnoses of traumatic brain injury, diabetes, chronic obstructive pulmonary disease and advanced wound care following debridement of a pressure ulcer requires specific training and skills - not just medical skills but psychosocial skills and training too. How well is your staff prepared to meet these diverse needs?

A resident verbalizes suicidal ideation. Is your social worker trained and capable of conducting a thorough assessment that not only protects the resident but your facility? Who is qualified to conduct such an assessment in the social workers absence? Are the nurses and aides on that unit prepared to identify and report escalating mood problems and behaviors and are the reporting channels wide open?

Considering admitting a resident with Huntington's chorea? Make sure the staff is knowledgeable about the disease, treatment, barriers and challenges and how best to interact with the family. And, do all this before the individual arrives at the front door. Not only is this exceptional customer service, it's thoughtful and high quality care.

Administrators and Directors of Nurses must continually identify areas in which staff requires additional training, mentorship and support. Further, they are charged with the enormous responsibility to empower staff of all disciplines to speak up and ask for help, for additional training and the resources they need to be successful. How about empowering staff to be involved in the training development and delivery? How great to have a nurse's aide take the lead on teaching his peers about contractures with rheumatoid arthritis? Invite the social worker to teach staff how to be present with a resident who is grieving. Get your medical director involved in teaching again, and make it fun for them to share their view with the team. Talk about super Performance Improvement Projects (PIPs) and a robust education program!

Long term care facilities are charged with caring for and protecting some of the most vulnerable adults in our communities. Let's help staff be successful with this charge and expand their scope of training. Get them excited about and taking ownership of their own set of skills. Share their successes on a bulletin board in a community area. Have friendly contests for the best inservice, the most entertaining speaker, the most informative session – get creative! Let staff shine and take pride in their education program, share it with visitors, family members and the general public. You don't have to be an expert on all topics. You do have to be an expert on identifying opportunities for teaching, for mentorship, for learning and for improvement.

*Paige Hector is a clinical educator, who gives workshops and seminars across the country on diverse topics including clinical operations for the inter-professional team, meaningful use of data, advance care planning, refusal of care, documentation and care plans. She is skilled at inspiring staff to critically evaluate their own organizations and then gives them the resources and guidance to make necessary changes. Contact Paige at 520-955-3387 or at paigehector@gmail.com plus you more discover more about her at www.paigeahead.com*

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## "A Very Difficult Subject to Discuss"

The world we live in is a vastly different place than just a few years ago, let alone several decades back. If you're someone that is into nostalgia you'll be aware of references to the "good ole' days" of the 1950's where folks left

the keys in their cars or their front doors unlocked, even overnight. Things like this were done in many neighborhoods because there was a lack of fear your automobile would be stolen, or that someone would waltz through your front door and steal things or do you harm.

Imagine leaving your front door unlocked while you went to sleep in this day and age. You just wouldn't do it! Sadly, as well, in today's society honest and good people have been put in harm's way simply because they have gone to the local mall, or to a movie, or to school, or yes to work in a nursing or assisted living facility. Anymore, there doesn't seem to be a day that goes by without us reading or hearing about an "Active Shooter" scenario where an armed gunman has gone on a rampage, killing innocent people whose only crime was literally being in the wrong place at the wrong time.

You noticed I mentioned assisted living and nursing facilities because these venues, like everywhere else in our society, are not immune. Recently, I had the opportunity to sit down and speak with a long-term care security consultant, Joseph Murray, who's an expert on the subject of active shooter situations. **More on the reason for our discussion in a moment but suffice to say the time has come for every nursing and assisted living facility to recognize they present a potential active shooter target. Furthermore, and most importantly, it's time you put an action-plan in place to act and react in case your building is struck.**

I was very fortunate to speak with Mr. Murray. He is the go-to individual on this important subject. His credentials are impeccable. He's a former New York City police officer; he's also spent time as a member of the Orlando, FL police force. Joe Murray has also consulted with and developed Active Shooter response policies for numerous healthcare organizations nationwide, and holds certifications from the U.S. Department of Homeland Security on Active Shooter and Incident Command. He is also a U.S. Navy veteran. In other words, when Joseph Murray speaks on the subject of an Active Shooter in an assisted living facility or a nursing home, we all need to be listening.

Here is some important information that Joe shared with me that all nursing and assisted living facility staff members need to know in the times we now live:

- You must be aware of people who enter your building. The days of head down, focusing on your job, and not really paying attention to those around you are gone. Accordingly, pay attention if you see people that are unfamiliar to you, and ask if you may be of service? Don't do this in a fearful or belligerent fashion but in a desire to be of service. The point here is that a potential "Active

Shooter" may be casing your facility in order to get a lay of the land only to return in the future with a harmful intent.

- Staff members must identify two ways if possible to exit the facility, in case an active shooter situation arises. This is because the gunman may be blocking one of your planned exits from the building, and you need a backup means to escape.
- Staff members must understand the "who" and the "why" of the type person that becomes an active shooter. There are four specific possibilities that can lead someone to turn violent with the intention of harming others. You must be aware of all four types because in certain cases, knowing the type can prevent an active shooter from entering your facility in the first place.
- The facility must be equipped to notify authorities in case a gunman appears in the facility. This notification from staff shouldn't be dependent on getting on the telephone and dialing 9-1-1 because there may not be time to do this as chaos commences.



Joseph Murray  
Active Shooter Expert

I also spoke with Mr. Murray about the very real possibility that facility staff could decide not to flee, opting instead to stay and protect their residents if an active shooter enters the building. In Joe's words, *"this is very likely to be the case because our healthcare staff members are like firemen and policemen; they run towards the danger and not away from it."* Because of this, Joe explains there are some definite things that must be done with an eye towards saving the lives of both residents and staff:

- If entering a resident's room where the door opens in, shut the door and block it with a heavy object such as the resident's bed and/or other pieces of furniture. If the resident's door opens out, still block the entranceway with anything you have in the room. As Mr. Murray says, *"the objective here is to make it as difficult as possible for the gunman to enter the room. He isn't going to waste time; he's looking to shoot as many people as possible in as short a period of time as possible, and if you make it difficult for him to get in the room, he will just move on to somewhere else."*

Accordingly here, there are specific details staff needs to also know about properly hiding and concealing oneself from an active shooter; things to look for and things to keep in mind. In addition, staff members could be faced with a situation where they may have to personally take on a gunman. While no one wants to think about an arm-to-arm confrontation with such an individual, circumstances may dictate exactly this. Here as Joe points out, *"if you have to fight, it's a fight you can't afford to lose because your very life will depend on the outcome."* And yes, there are things that every staff member can do to win such a fight, according to Joseph Murray, whether the staff member is a 6-2 male or a 5-2 female.

**Here's the bottom line to all of this.** There is too much information (and things you must know) to cover in the short space I have in

*Continued on page 5*

- Identify significant issues including system concerns and develop and implement a plan to address these issues to include in-service
- Meet with department heads to discuss identified concerns conduct an Inter-Disciplinary Team Meeting and in-service within 48 hours
- Secure the medical record with any and all related documentation including overflow in the administrator's office. (If the resident currently resides in the building, keep a copy on the unit and secure the original record in the administrator's office)
- Send documents and all applicable information to your attorney and compliance officer
- Circulate a "Litigation Hold Letter" regarding preservation of evidence and directives for implementing the company policy on retention to key personnel
- Complete a summary/outcome of the facility's internal investigation and submit to your attorney and compliance officer



*Special Guest Contributor,  
Hunter C. Carroll, President, HAT Law Firm*

The importance of thorough completion and timely responding to legal requests and actions cannot be over-emphasized. Statutes, regulations, and rules that differ between states govern the time to produce records and respond to subpoenas and Complaints. Having protocols in place will help your organization identify and address risk issues and help facilitate the steps to gather the necessary information. The facility and senior management must be invested in the process so that system concerns, including quality of care, can be promptly addressed. Hagwood Adelman Tipton works with our clients to design and implement plans tailored to each organization's needs to reduce risk and exposure including the recommended protocols should a legal event arise.

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Keep in mind that effective defenses and plans are developed long before the threat of a lawsuit ever occurs. Regularly updated policies, in-service plans and employee education will be requested may be critically reviewed in litigation and, therefore, should be up to date.

Although prevention is important, legal issues arise even for the most proactive company. When these issues arise, it will be helpful to create a list of individuals that may have information about the resident, their family or the issues made the basis of the request, if known. This practice will facilitate the information gathering process and help your team to better understand the (potential) claims. A designated person within the company, or even your attorney, should reach out to these key people to assess their understanding of the facts. This is important early in the process before memories fade. Remember, claims do not get better with time.

#### *Kessler's Corner continued from page 4*

these pages. Indeed by this point, I'm sure I have your heart beating a little faster, and your pulse elevated as well. The title of this column "A Very Difficult Subject to Discuss" certainly says it all. It's not my aim to make you paranoid. No one wants to think when I report to work tomorrow at my facility that my world is going to be turned upside down. However to just go about our daily activities without a moment's thought to what's taking place in the world we now live in is foolish. I'm not talking about a foreign group bent on destruction either; I'm referring to someone's neighbor in your community that could enter your facility tomorrow, next week or next month, armed and ready to do damage.

I mentioned earlier that there was a reason I sat down with Joseph Murray. Our purpose was to produce an Active Shooter Discovery program for use by our nation's Assisted Living and Nursing Facilities. I'm pleased to say that this Active Shooter DVD program is now available at [www.ExtendedCareProducts.com](http://www.ExtendedCareProducts.com) and as well there's also a resource guide with Mr. Murray's insights that is part of this package. Here you'll discover the steps you must take to act and react in case the unthinkable does strike your facility.

You'll learn who can take on the role of an active shooter and why they do it. You'll discover specific steps to work with your local authorities both before and during an active shooter scenario; and why communication between staff can potentially prevent an active shooter from ever entering your facility in the first place. It's my goal to have every nursing and assisted living facility in the nation get this program because it's that important. Accordingly I've made the investment very fair for the amount of A-1 information you are going to receive.

Whether you have been a client in the past, or have never ordered anything from my company Extended Care Products, this Active Shooter DVD program and resource guide is the most important investment you will ever make for your building. After all, you can't put a price-tag on life! The decision is yours; I hope you make the right one.

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